

**Maine Department of Health and Human Services**

**Business Associate Agreement**

This Business Associate Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between the State of Maine, Department of Health and Human Services and \_\_\_\_\_ (“Business Associate”) with an address at \_\_\_\_\_.

WHEREAS, the parties intend to protect the privacy and security of all individually identifiable health information and protected health information in accordance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), P.L. 104-91, codified at 42 U.S.C. §§ 1320 (d)(1)-(d)(8), and all regulations adopted pursuant thereto. Although this agreement is executed to comply with the provisions of HIPAA, the parties agree that certain state laws imposing confidentiality restrictions also apply to govern this business relationship. These may include all or some of the following state laws; this list is for informational purposes only, to illustrate the potential scope of state confidentiality provisions, and is not intended to be an all-inclusive list of the applicable statutes: 5 MRSA §19203; 5 MRSA §20047; 22 MRSA §§42, 261, 815, 824, 833, 1494, 1596, 1828, 3173, 3292, 4008, 5328, 7250, 7703, 8754; 34-B MRSA §1207.

NOW THEREFORE, the parties agree as follows:

**Definitions:**

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191.

“Protected Health Information” shall have the same meaning as the term “protected health information (“PHI”) in 45 C.F.R. §1604.103, limited to information created or received by the Business Associate from or on behalf of the Department.

“Required by law” shall have the same meaning as the term “required by law” in 45 C.F.R. §164.103.

“Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services, or his or her designee.

**1. Term of Agreement**

This Agreement shall be effective \_\_\_\_\_ and shall continue to \_\_\_\_\_. This Agreement shall automatically renew itself for an additional twelve-month period unless otherwise terminated by either party. In the event that this Agreement is automatically renewed, the Business Associate agrees to be bound by the Terms and Conditions currently in effect. The confidentiality provisions of this Agreement shall **survive indefinitely**, even beyond the termination of this Agreement, or as defined under provisions of law.

**2. Termination of Agreement**

Upon termination of this agreement the Business Associate is required, if feasible, to return or destroy all PHI received from or created or received by the Business Associate on behalf of the Department and retain no copies. If returning or destroying PHI is not feasible, Business Associate agrees to protect the confidentiality of the PHI to the extent required by HIPAA and any regulations promulgated there under, and limit any further use or disclosure to those purposes that make the return or destruction of the

information infeasible. Either party may terminate the Agreement by 30 day written notice to the other party.

### **3. Termination for Cause**

Upon the Department's knowledge of a material breach by the Business Associate, the Department shall either, at its sole discretion:

- Provide the Business Associate an opportunity to cure the breach or end the violation within a time frame and upon such conditions as established by the Department;
- Immediately terminate this Agreement in the event the Business Associate has breached a material term of this Agreement and cure is not possible; or
- In the event neither termination nor cure is feasible, the Department shall report the violation to the Secretary.

### **4. Permitted Uses and Disclosures**

The only permitted uses and disclosure of PHI in this agreement are stated in attachment A. Except as otherwise limited by this agreement, the Business Associate may use or disclose Protected Health Information to perform functions, activities or services for, or on behalf of, the Department provided that such use and disclosure would not violate HIPAA, the regulations promulgated there under, or the HIPAA minimum necessary policy. The Business Associate will disclose protected health information only as permitted, or required by this Agreement, or as required by law.

### **5. Documentation and Availability**

Business Associate is required to maintain and make available the information required to provide an accounting of disclosures in accordance with 45 CFR 164.528. Documentation will be made available as necessary for an accounting of disclosures of PHI to the individual and or the Department as permitted by 45 C.F.R. 164.528.

- The Business Associate will make PHI available to an individual to access and or copy his/her PHI as permitted by 45 C.F.R. 164.524, within 30 days from the time of request.
- The Business Associate will make available PHI for amendment as permitted by 45 C.F.R. 164.526, within 60 days from the time of request.
- The Business Associate will make its internal practices, books and records relating to the use or disclosure of PHI received from the Department or created or received by the Business Associate on behalf of the Department, available to either the Department or the HHS Secretary for the purposes of determining the compliance of either the Department or the Business Associate with the Medicaid Act and HIPAA Privacy Rule. 45 C.F.R. 164.504
- In the event Business Associate has PHI in a designated record set, the Business Associate agrees to make any amendments to the Designated Record Set as the Department directs or agrees to in accordance with 45 C.F.R. §164.526 in such time-period and in such manner as the Department may direct.

## **6. Inappropriate Use and Disclosure**

The Business Associate is required to report to the Department any inappropriate use or disclosure of the PHI of which it becomes aware, i.e. use or disclosure not permitted in this agreement or permitted by law. Business Associate will make such report to the Department Privacy Officer or designee by the end of the following business day.

The Business Associate shall exhaust, at its sole expense, all reasonable efforts to mitigate any harmful effect known to the Business Associate arising from the use or disclosure of PHI by Business Associate in violation of the terms of this Agreement.

## **7. Appropriate Safeguards**

The Business Associate will implement, to the Department's satisfaction, all reasonable and appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of PHI. Safeguards will be implemented for paper as well as electronic versions of PHI. Business Associate will ensure that any agent or subcontractor to whom it provides PHI received from, created or received by Business Associate on behalf of the Department agrees to the same restrictions and conditions which apply through this Agreement to the Business Associate with respect to such information.

## **8. Obligations of the Office of MaineCare Services**

The Department shall notify Business Associate of any limitation in its Notice of Privacy Practices that would affect the use or disclosure of PHI by the Business Associate.

The Department shall notify the Business Associate of any changes, revocations, restrictions or permissions by an individual to the use and disclosure of his/her PHI.

The Department shall notify the Business Associate of any restriction to the use or disclosure of PHI that the Department has agreed to in accordance with 45 CFR §164.522, to the extent such restriction may affect the use or disclosure of PHI by the Business Associate. The HIPAA Privacy Rule allows covered entities, at their discretion, to accommodate requests for confidentiality by the subject of the PHI. If the Department has agreed to accommodate a confidentiality request, it has a duty to disclose such to its trading partners in order to allow the trading partner to honor the confidentiality agreement.

## **9. Agents**

The Business Associate agrees to ensure that any agent, including a subcontractor to whom it provides or entrusts PHI as defined in this Agreement, will agree to the same restrictions and conditions governing PHI which apply to the Business Associate with respect to such information under the terms and conditions of this Agreement.

## **10. Hold Harmless**

Business Associate agrees to indemnify and hold harmless the Department, its directors, officers, agents, shareholders, and employees against any and all claims, demands, expenses, liabilities or causes of action which arise from any use or disclosure of PHI not specifically permitted by this agreement or applicable state and federal laws.

## **11. Miscellaneous**

- (a) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Department to comply with the requirements of the Privacy Rule and HIPAA.

(b) Interpretation. Any ambiguity in this Agreement shall be resolved to permit the Department to comply with the Privacy Rule and HIPAA.

**12. Priority of Agreement**

If any portion of this Agreement is inconsistent with the confidentiality terms of any of the agreements listed in Attachment A, the terms of the agreements listed in Attachment A shall prevail.

IN WITNESS WHEREOF, the parties have executed this BUSINESS ASSOCIATE AGREEMENT the day and year first written above.

	Department		Business Associate
Signature:	_____	Signature:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____